

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

RECEIVED  
JUN 13 2019  
WATER RESOURCES  
WESTERN REGION

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested App. for Permit No. 63-34652 in the name of Cat Creek Energy LLC

2. Name of protestant Idaho Conservation League

3. Protestant's Representative for service (If different than protestant)  
Matthew Nykiel and Marie Callaway Kellner

4. Service mailing address P.O. Box 2308, Sandpoint, ID 83864 and P.O. Box 844 Boise, ID 83701

5. Service telephone no. (208) 265-9565 and (208) 345-6933 ext. 32

Email Address: mnykiel@idahoconservation.org and mkellner@idahoconservation.org

6. Basis of protest (including statement of facts and law upon which the protest is based)  
Please see Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Please See Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 11<sup>th</sup> day of JUNE, 2019.

Idaho Conservation League  
Protestant

  
Protestant's Representative

**NOTE:**

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

---

**INSTRUCTIONS**

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. \_\_\_\_\_ in the name of \_\_\_\_\_" or "Application for Transfer No. \_\_\_\_\_ in the name of \_\_\_\_\_."
  2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
  3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
  4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
  5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
  6. Specifically describe the nature of the protest.
  7. Describe the relief being sought by the protestant.
- 

**FOR DEPARTMENT USE ONLY**

Received by KT Date 6/13/19 Time 9:39 am  
\$25.00 fee Received by KT # W047495 Date 6/13/19

**Attachment A: ICL Basis of Protest in App. for Permit No. 63-34652**

Pursuant to Idaho Code § 42-203A(4), the Idaho Conservation League (“ICL”) respectfully submits this protest to Application for Permit No. 63-34652, in the name of Cat Creek Energy LLC (“Cat Creek”). Cat Creek seeks 3,000 cfs for diversion to storage, 30,000 af for irrigation storage, 30,000 af for irrigation from storage, 30,000 af for mitigation by delivery from storage, 30,000 af for mitigation by delivery storage, 30,000 af for municipal from storage, and 30,000 af for municipal storage. All of the proposed uses would be year-round uses of water from the South Fork of the Boise River, except for the irrigation storage use, which would only apply between March and November.

As allowed by I.C. § 42-203A(5)(b)-(e)&(g), ICL contends that the water supply is insufficient for the purpose for which it is sought; that the application is made for delay or speculative purposes; that the applicant does not have sufficient resources with which to complete the work involved; that this proposed use of water is not in the local public interest as defined in I.C. § 42-202B(3); and, to the extent that any water will be consumptively lost to the basin of origin, that it will adversely affect the local economy of the watershed within which the source of water for the proposed use originates.

The application seeks water without demonstrating that the water is available. Related, the application seeks to remove water from the South Fork Boise River which is not only an important recreational fishery in Idaho, but also critical habitat for bull trout, a species protected by the federal Endangered Species Act. Moreover, water diverted up and out of Anderson Ranch Reservoir on a potential daily basis at a rate of 3,000 cfs poses an extreme hazard to all fish within the reservoir.

Despite this application being a companion to water right application No. 63-34403, this application still does not include a water availability analysis, engineering or other project design information, cost estimates, nor does it include a narrative explaining this unique proposal and how it would protect flows in the South Fork Boise River. And, while the application indicates the existence of other information, such as an “initiated” Lease of Power Privilege with the U.S. Bureau of Reclamation and memorandums of agreement with irrigation districts and municipalities, no additional documents or information was included in this application for the review of interested parties. For these reasons, ICL is unable to determine that the application is not speculative or that the applicant has sufficient financial resources to complete it.

Additionally, we note the application proposes to utilize and, to some extent, remove water from the most populated watershed in Idaho to a different watershed. While the applicant has reached out to ICL, the application provides no documentation of coordinated efforts with or support of the numerous impacted downstream municipalities, businesses, irrigated agricultural community, other interested stakeholders or the citizens of that watershed of origin. As this proposed use stands to injure all of these entities, it is inappropriate and should be denied.

ICL reserves the right to amend this protest on additional grounds as they may be discovered.

### **Relief Sought**

For the foregoing reasons, ICL requests that Application for Permit No. 63-34652 be denied or, if possible, conditioned to mitigate the impacts identified above.

## CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of June 2019, I caused to be served a true and correct copy of the foregoing NOTICE OF APPEARANCE by placing a copy thereof in the manner listed below:

*Via U.S. Mail, postage prepaid*

Original to:

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705

Copies to:

Cat Creek Energy LLC  
398 S. 9<sup>th</sup> St., Ste 240  
Boise, ID 83702



MATTHEW A. NYKIEL  
Idaho Conservation League